114-562

RECEIVED
MAR 26 1885
JAMES H. McKENNEY,
CLERK.

# In the Supreme Court of the United States.

OCTOBER TERM, 1884.

WILLIAM ALLING, SURVIVOR, &C., Appellant, v. THE UNITED STATES. } No. 219.

*APPEAL FROM THE COURT OF CLAIMS.*

BRIEF FOR THE UNITED STATES.

# In the Supreme Court of the United States.

OCTOBER TERM, 1884.

WILLIAM ALLING, SURVIVOR, &C.,
Appellant,
*v.*
THE UNITED STATES.

No. 219.

*APPEAL FROM THE COURT OF CLAIMS.*

## BRIEF FOR THE UNITED STATES.

The case is thus: During the war with Mexico, and while Matamoras was occupied by the troops of the United States, a firm, transacting under the style of Samuel A. Belden & Company, of which the petitioner is the sole survivor, were engaged there in the business of sutlers.

This firm remained in Mexico after the conclusion of peace and the withdrawal of our troops, and sustained considerable damage by certain unwarrantable proceedings set on foot against them by the Mexican axthorities. This, as too often happens, they made the foundation for a very exaggerated claim against Mexico, which was

promptly brought to the attention of our Government with a view to a demand against that country for indemnity.

Congress, recognizing some equity in Belden & Co. to have refunded them, until such time as they should be indemnified, the duties they had paid the United States military authorities at Matamoras on merchandise, which, or the proceeds of which, had been unlawfully seized by the Mexican authorities, passed the following act on the 10th February, 1855 (10 Stat., 847):

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury be, and he is hereby, authorized and directed to audit and settle an account of the duties paid by Samuel A. Belden and Company to the officers of the United States charged with their collection, in the city of Matamoras, in the Republic of Mexico, whilst that city was in the military possession of the United States, upon merchandise, except tobacco, imported by them into Matamoras during that period, which, after the restoration of peace between the two countries, they were deprived of, either in the form in which imported, or in the proceeds of sales, by illegal seizure, confiscation, sequestration, or their forced abandonment of the same by the judicial authorities of the Mexican Government, and pay the amount thus ascertained to the said Samuel A. Belden and Company, out of any money in the Treasury not otherwise appropriated, upon the execution by them of a proper and legal assignment to the United States of all their right to the amount so refunded when recovered from the Government of Mexico.
>
> Approved, February 10, 1855.

The result of the action of the Secretary of the Treasury under this law was that the amount of the duties to be refunded was ascertained to be $18,347.28, and that sum was paid to Belden & Co., who, in return, executed and delivered the following assignment to the United States:

> Whereas it is provided by an act of Congress, approved on the tenth day of February, A. D. 1855, entitled "An act for the relief of Sam'l A. Belden and Company," "That the Secretary of the Treasury be, and he is hereby, authorized and directed to audit and settle an account of the duties paid by Samuel A. Belden and Company to the officers of the United States charged with their collection in the city of Matamoras, in the Republic of Mexico, whilst that city was in the military possession of the United States, upon merchandise, except tobacco, imported by them into Matamoras during that period, which, after the restoration of peace between the two countries, they were deprived of, either in the form in which imported or in the proceeds of sale, by illegal seizure, confiscation, sequestration, or their forced abandonment of the same by the judicial authorities of the Mexican Government, and pay the amount thus ascertained to the said Samuel A. Belden and Company out of any money in the Treasury not otherwise appropriated, upon the execution by them of a proper and legal assignment to the United States of all their right to the amount so refunded when recovered from the Government of Mexico."
>
> And whereas the said Secretary of the Treasury, through the proper accounting officers of the Treasury, has audited and settled the said account of Samuel A. Belden and Company, in part, to wit, for all that portion of said account in which it is satisfac-

torily proved that the duties were paid by said Belden and Company to the officers of the United States charged with their collection, "which, after the restoration of peace between the two countries, they were deprived of, either in the form in which imported, or in the proceeds of sale by illegal seizure, confiscation, and sequestration, or their forced abandonment of the same by the judicial authorities of the Mexican Government," and has paid to the said Samuel A. Belden and Company the amount so found due to them, viz, the sum of eighteen thousand three hundred forty-seven dollars and twenty-eight cents:

Now, therefore, be it known that in consideration of the payment to us of said sum of eighteen thousand three hundred forty-seven dollars and twenty-eight cents, the receipt whereof is hereby acknowledged, we hereby assign, transfer, and set over to the United States, all our right, title, claim, and interest in and to said amount so refunded to us, so that neither we, the said Samuel A. Belden and Company, nor our heirs, assigns, or administrators, shall claim or demand any part therof.

In witness whereof, we have hereto set our hands, this twenty-seventh day of July, A. D. 1855.

SAM'L A. BELDEN & CO.

Witness:

JNO. D. BARCLAY.

On the 4th July, 1868, Mexico and the United States entered into a treaty providing for the adjustment "of the claims of citizens of either country against the other." (15 Stat., 679.)

Belden & Company brought their claim against Mexico before the Commission established under this treaty, and

the result of their action in that behalf was the following award in their favor:

WEDNESDAY, *July* 19, 1871.

SAMUEL A. BELDEN & CO. *vs.* MEXICO. } No. 131, A. D.

The umpire, Dr. Francis Lieber, having decided that claimants in this case are entitled to an award, Mr. Commissioner Wadsworth delivered the following order and award of the commission:

This case having been decided by the umpire, and his opinion returned to the Commissioners, and it appearing that the claim had been promptly presented to the Mexican Government by the minister of the United States resident at Mexico (Mr. Letcher), and subsequently by Mr. Conkling:

It is now ordered and awarded that the Government of the Republic of Mexico pay to the United States for and on behalf of claimants, Samuel A. Belden & Co., for 299 bales of tobacco, the sum of thirteen thousand one hundred and fifty-four dollars and fifty-six cents, with interest from the 20th day of October, 1849, at 6 per cent. per annum; and the further sum, for goods seized and sold under execution, and loss attending same, of ten thousand dollars, with interest from March 6th, 1850, in the currency of the United States, making a total to July 1st, 1871, of fifty-three thousand and ninety-nine dollars and twenty-five cents (*i. e.*, 853,099.25).

But as the United States paid to said Belden & Co., on the 27th of July, 1855, on account of his supposed losses, the sum of eighteen thousand three hundred and forty-seven dollars and twenty-eight cents, and took from them an assignment in writing of their said claim (now before us), which advance, with in-

terest after the rate allowed claimants, amounts now to the total sum of thirty-five thousand nine hundred and twenty dollars eighty-one cents (i. e., $35,920.81), nothing in this award is to be construed as preventing the United States from retaining out of the gross sum awarded herein as due that Government on said assignment the aforesaid sum of thirty-five thousand nine hundred and twenty dollars and eighty-one cents, paying to Belden & Co. the balance, viz., seventeen thousand one hundred and seventy-eight dollars forty-four cents.

There is also awarded $100, costs of printing, &c., in currency.

W. H. WADSWORTH,
*Am. Com'r.*
FRAN'CO G. PALACIO,
*M. C.*

RANDOLPH COYLE, *Sec't'y.*
J. CARLOS MEXIA, *Srio.*

The amount decreed against Mexico was payable in thirteen annual installments to the Government of the United States.

On the 18th June, 1878, Congress passed an act (20 Stat., 144) to provide for the distribution of the awards made under the convention of the 4th July, 1868, the first section of which is as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of State be, and he is hereby, authorized and required to receive any and all moneys which may be paid by the Mexican Republic under and in pursuance of the conventions between the United States and the Mexican Republic for the adjustment of claims, concluded July fourth, eighteen

hundred and sixty-eight, and April twenty-ninth, eighteen hundred and seventy-six; and whenever, and as often as, any installments shall have been paid by the Mexican Republic on account of said awards, to distribute the money so received in ratable proportions among the corporations, companies, or private individuals, respectively, in whose favor awards have been made by said commissioners, or by the umpires, or to their legal representatives or assigns, except as in this act otherwise limited or provided, according to the proportion which their respective awards shall bear to the whole amount of such moneys then held by him, and to pay the same, without other charge or deduction than is hereinafter provided, to the parties respectively entitled thereto. And in making such distribution and payment due regard shall be had to the value at the time of such distribution of the respective currencies in which the said awards are made payable; and the proportionate amount of any award of which by its terms the United States is entitled to retain a part shall be deducted from the payment to be made on such award, and shall be paid into the Treasury of the United States as a part of the unappropriated money in the Treasury.

It will be observed that this section expressly provides that "the proportionate amount of any award *of which by its terms the United States is entitled to retain a part shall be deducted from the payment to be made on such award*, and shall be paid into the Treasury of the United States as a part of the unappropriated money in the Treasury."

It is the observance of this mandate of the statute by the Secretary of State that has given rise to the case at bar.

terest after the rate allowed claimants, amounts now to the total sum of thirty-five thousand nine hundred and twenty dollars eighty-one cents (i. e., $35,920.81), nothing in this award is to be construed as preventing the United States from retaining out of the gross sum awarded herein as due that Government on said assignment the aforesaid sum of thirty-five thousand nine hundred and twenty dollars and eighty-one cents, paying to Belden & Co. the balance, viz., seventeen thousand one hundred and seventy-eight dollars forty-four cents.

There is also awarded $100, costs of printing, &c., in currency.

W. H. WADSWORTH,
*Am. Com'r.*
FRAN'CO G. PALACIO,
*M. C.*

RANDOLPH COYLE, *Sec't'y.*
J. CARLOS MEXIA, *Srio.*

The amount decreed against Mexico was payable in thirteen annual installments to the Government of the United States.

On the 18th June, 1878, Congress passed an act (20 Stat., 144) to provide for the distribution of the awards made under the convention of the 4th July, 1868, the first section of which is as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of State be, and he is hereby, authorized and required to receive any and all moneys which may be paid by the Mexican Republic under and in pursuance of the conventions between the United States and the Mexican Republic for the adjustment of claims, concluded July fourth, eighteen

> hundred and sixty-eight, and April twenty-ninth, eighteen hundred and seventy-six; and whenever, and as often as, any installments shall have been paid by the Mexican Republic on account of said awards, to distribute the money so received in ratable proportions among the corporations, companies, or private individuals, respectively, in whose favor awards have been made by said commissioners, or by the umpires, or to their legal representatives or assigns, except as in this act otherwise limited or provided, according to the proportion which their respective awards shall bear to the whole amount of such moneys then held by him, and to pay the same, without other charge or deduction than is hereinafter provided, to the parties respectively entitled thereto. And in making such distribution and payment due regard shall be had to the value at the time of such distribution of the respective currencies in which the said awards are made payable; and the proportionate amount of any award of which by its terms the United States is entitled to retain a part shall be deducted from the payment to be made on such award, and shall be paid into the Treasury of the United States as a part of the unappropriated money in the Treasury.

It will be observed that this section expressly provides that "the proportionate amount of any award *of which by its terms the United States is entitled to retain a part shall be deducted from the payment to be made on such award*, and shall be paid into the Treasury of the United States as a part of the unappropriated money in the Treasury."

It is the observance of this mandate of the statute by the Secretary of State that has given rise to the case at bar.

The Secretary deducted the principal and interest of the duties refunded under the act of 1855, amounting to $35,920.81, from $53,099.25, the sum total awarded Belden & Co., leaving for the claimants the residuum of $17,178.44, and he has retained for the Government and paid to the claimants out of each annual installment sums representing the proportion between each of the two amounts and such installment.

The claimants deny the right of the Government to make the deduction in question, and seek to recover the amount already withheld at the filing of the petition, being something over $3,000, and the amounts that may be withheld out of the installments yet to be paid by Mexico.

The ground on which this pretension is founded is:

1. That the reference in the award to the obligation of Belden & Co., under the act of 1855, forms no part of the award, which does not purport to adjudicate any matter of difference between the United States and Belden & Co.

2. That the commission had no jurisdiction to deal with any such matter, and, consequently, that the reference in the award to it is merely *gratis dictum*.

3. That there is no connection whatever between the act of 1855 and Belden & Co.'s assignment under it, and the first item of allowance in the award, namely, the sum of $13,154.56, with interest from the 20th October, 1849, for 299 bales of tobacco, the act by its terms excluding duties on tobacco. That as no duties paid on tobacco were refunded by the United States to Belden & Co., "no assignment of any such duties could be or was made to the United States;" that the tobacco when seized was at Sal-

tillo and not Matamoras; and that the amount awarded as indemnity for the losses of Belden & Co., at Matamoras, is only $10,000, which is not half the sum refunded under the act of 1855, with interest.

The United States, after filing the common traverse (p. 5), pleaded to the jurisdiction of the court (p. 5), and, later still, put in a plea of set-off (pp. 5, 6) to the effect that the claimants were indebted to the United States in the sum of $50,000 for money had and received.

JURISDICTION.

Section 1066 of the Revised Statutes regulating the jurisdiction of the Court of Claims, provides that "the jurisdiction of said Court shall not extend to any claim against the Government not pending therein on December one, eighteen hundred and sixty-two, *growing out of or dependant on any treaty stipulation entered into with foreign nations* or with the Indian tribes."

It is submitted that the Court of Claims had no jurisdiction to entertain this case, for it would seem to be very clear that the liability imputed here to the United States both "grows out of," and is "dependent on," a treaty stipulation. But for the treaty of July 4, 1868, the money would not have been paid to the United States, and the latter would have come under no duty to distribute it. As this court has said, the Court of Claims has jurisdiction only "of claims made directly against the United States, and for payment of which they were primarily liable, if liable at all, and not to claims against

"for goods seized and sold under execution, and loss attending same."

This narrow and unreasonable view of the act of 1855, was rejected by the Court of Claims, as it had been by the Commission and by Mr. Secretary Evarts. Indeed the sixth finding of the Court of Claims (p. 14) states that the claimants themselves in their "memorial" filed before the Commission "admit the payment of $18,347.25 by the United States, *and the assignment to them of so much of their claim*," a position quite repugnant to the one now taken. The memorial may be regarded, not improperly, as a declaration *ante litem motam*, and the petition in the Court of Claims as a declaration *post litem motam*. Looking forward to a large award, it did not occur to the claimants when they prepared their memorial that there was any question as to the Government's right to be made whole out of *any* recovery they might effect.

That the claim of Belden & Co. was greatly exaggerated by fraud, as well before the Secretary of the Treasury in 1855 as before the Commission is apparent by a comparison of the large amount claimed for losses, aside from tobacco, and the small amount awarded. The finding of the Commission in this particular shows that the Secretary of the Treasury must have been misled by the false representations of the claimants in fixing the basis of value on which the amount of duties to be refunded was to be calculated.

It may be remarked that the provision of the act of the 18th June, 1878 (*supra*) directing deductions to be made from any award by the terms of which the United States is entitled to retain a part, is specially applicable to this

case, the award in which is the only one by its terms authorizing the United States to withhold part of the recovery, as appears, we think, by the report of the Secretary of State to Congress.

THE QUESTION AS TO INTEREST.

Supposing, now, that the amount paid under the act of 1855 can be deducted from the award to Belden & Co., it is contended that it is the principal money alone that can be so withheld. This contention is based on the fact that the act of 1855 is silent as to interest, it merely calling for an assignment of the "amount so refunded." But is it consequential to say that interest must be disallowed because not mentioned in the act *nominatim?* Certainly not, if it can be gathered by implication from the language used by Congress that interest was intended to be included.

How then stands the matter? If the interpretation put upon the act by the Court of Claims, by the Mexican Commission, and by Mr. Secretary Evarts, namely, that the effect of it and the assignment pursuant to it was to transfer to the United States so much of the claim of Belden & Co. as was equal to the sum refunded to them is correct, then the United States became the *owner* of so much of the claim, and stands on the same footing as Belden & Co., in so far as Mexico is concerned. If now Mexico has been decreed to pay interest on the whole claim, on what principle is it that the United States is to be deprived of the fruits and incidents of so much of it as is covered by the assignment? Certainly natural